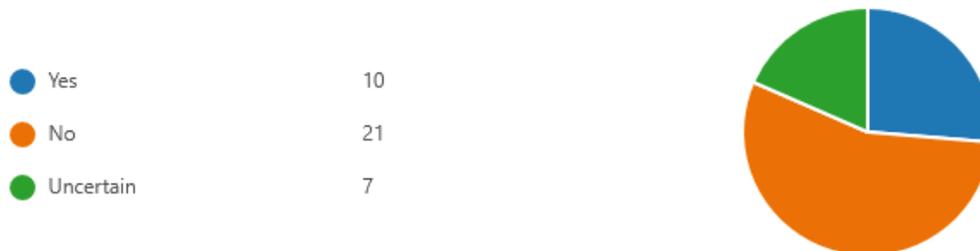


Survey Result on Swiss Lex Trust

Survey conducted by Verein STEP from 21 - 28 March 2022 sent by email
38 responses out of 923 invites

1. Based on the current draft law, would you offer a Swiss Trust to your clients?



2. If yes, what convinces you about the draft law?

1. The draft is actually excellent. The tax treatment may need some further optimisation.
2. It is drafted very close to the Anglo-Saxon rules.
3. Domestic law
4. Ch-trust seems to be an alternative to the CH-Stiftung without the shortcoming of limiting proper payments of wages/fees to trustees.
5. Swiss jurisdiction as place for court cases
6. Clear language, sufficient flexibility
7. "nothing - better use known trust legislations"
8. The explanation report
9. arbitration clause; one jurisdiction solution with Swiss Trustee and Swiss bank

1

3. If not or uncertain, can you explain why you would not offer a Swiss Trust based on the current draft law?

1. The law is confusing does not provide any clarity and seems not to be competitive.
2. Some aspects are not still clear (ei personal responsibility of the Trustees out of the trust Fund and exclusion of purpose trusts). Still not efficient from taxation point of view (for Swiss residents)
3. The taxation of the discretionary Trust
4. Tax position
5. Tax ramifications, uncertainty how courts would apply the law
6. I see few benefits and there may be substantial tax disadvantages for Swiss resident parties.
7. Because Switzerland is a Civil law jurisdiction - no court practice and also some tax issues should be clarified
8. A Swiss Trust is a "limping trust" and will never convince common law persons - they will stick to the "original" and many questions concerning statutory entitlements etc. are still not resolved in a convincing way.
9. "The provisions appear attractive in respect of Trusts that have no Swiss tax resident settlor or beneficiaries but I would want more clarity of i) the tax residency status of such a trust (is it Swiss tax resident and what makes it so). and ii) actual taxation of the income of such ""non-Swiss"" trusts vis-à-vis investing in Swiss assets. Could it be treated as a non-Swiss tax resident for these purposes.
Also Switzerland is an expensive jurisdiction for professional services and I fear other jurisdictions will always be able to offer better prices, particularly if Trustee compliance fees include Government and Kantonal registration fees. Clients are increasingly sensitive to costs."
10. the Swiss do not understand the nature of a trust. there is no legal system in place I could rely on.
11. Insufficient clarity regarding tax issues; no real codification of equitable principles.

Survey Result on Swiss Lex Trust

Survey conducted by Verein STEP from 21 - 28 March 2022 sent by email
38 responses out of 923 invites

12. It is like trying to fit a square peg in a round hole with the 'adaptation' of a common law legal arrangement squeezed into a civil system.
13. "Tax, tax, tax. The tax provisions. And, due to their applicability to a I I trusts, they are dangerous not just for Swiss trusts bur for Switzerland as a jurisdiction!"
14. "The law needs, as far as I am concerned, further confrontation with international practices. Unless the trust is designed just for Swiss residents"
15. "The introduction of a Swiss law is an entirely unnecessary project in my view. I even find it harmful for the Swiss market and private client industry as it shows that the Swiss have not understood the salient elements of common law trust and are trying to emulate a civil law look-alike for marketing purposes. Over the past 50 years, we have established solid legal doctrine and court practice in dealing with foreign trusts in Switzerland. There is zero need to interfere with a competing ""Swiss trust"". Furthermore, the proposed tax treatment is going to be detrimental to existing trusts. It may even jeopardize the reliability of existing tax rulings. "
16. The proposed taxation of the Swiss trust (option 1).
17. not enough knowledge about it, jurisdiction uncertainty
18. The draft Bill is not prescriptive enough and doesn't cover the issues that Trustee need guidance on in the course of acting as Trustee.
19. "Seems less flexible when compared to offshore laws: Swiss forced heirship law still enforced (529b). Short trust period (529u). Provides less protection to the trustee (529k). Taxation proposal unclear."
20. Switzerland is not a common law country = no experience, esp. courts
21. a civil law trust does not make sense, amend foundation law to allow true family foundations
22. One important point to consider are taxes and they are clearly unfavourable. Of course there is a distinction between Swiss and non- Swiss residents, but also high net worth clients do consider to have residency in Switzerland or do have children studying and maybe living over here.
23. Not in line with the historic principle of Trusts, AND creates MANY Conflicts of Interest.

2

4. Does the current draft law provide you with certainty on the scope of your duties and powers as a Swiss trustee?

 Yes	13
 No	15
 Uncertain	10



5. If yes, can you comment on why you feel certain?

1. Simply the draft reports Aja convention's provisions.
2. Excellent draft covering all aspects.
3. The drat does appear to take into account the well known concepts of the Anglo-Saxon style trust
4. It provides legal certainty on the set-up of the trust sui generis.
5. Stated in the law
6. The Swiss Trust Law is succinct and written in plain language.
7. Jugde and court in Switzerland
8. The article is general and short , however it is up to the Trust Deed to explain and elaborate further duties and powers in big depth. In my point of view, no further elaboration is necessary.

Survey Result on Swiss Lex Trust

Survey conducted by Verein STEP from 21 - 28 March 2022 sent by email
38 responses out of 923 invites



6. If not or uncertain, where are your uncertainties in the draft law?

1. Uncertainties regarding the relationship between trustee duties and current Swiss law on such matters as forced heirship - how would the civil law cope with the common law concepts.
2. A trustee is not a common format in a civil law environment. The likelihood that the courts will modify the new regulation (and therefore the uncertainty) is high.
3. the Swiss legislator neither understands the job of a trustee nor the trust industry in Switzerland.
4. The drafting is inconsistent throughout and I'm puzzled as to why a trust registry is not mooted.
5. The Trustee is shown as having a role of pure administrator rather than a Trustee which is multi faceted. In other countries based on common law a great deal of jurisprudence has been established around the role and duties of the Trustees. The draft is very simplistic.
6. general CH-attitude by Courts/professionals to limit the action/responsibilities of Stiftung/Trust managers...
7. Not sufficient scope in terms of duties and obligations under Swiss law.
8. "Default minimum duties regarding management and investment of trust assets is unclear. It should further be possible to fully exclude liability of the trustees. Trustees would have to act in the ""exclusive"" interests of beneficiaries. There may be situations however where a third party incidentally benefits (along with a beneficiary). Not clear what is meant by ""important"" reasons under 529i: either delete or provide examples. Not clear whether trustees must ascertain the identity of all possible members of a class of beneficiaries."
9. There are many 'black holes' in this law that leave liability, conflicts of interest and undefined discretions to the trustees and protectors.

7. Which one are your further suggestions on the drafted Swiss Trust Law, in order to take part in the consultation process?

1. "- Tax - Trustee responsibility - more Trusts options (as alternative to Foundations)"
2. via SATC
3. None.
4. "1. Certainty of definition of tax residency. 2. Ability for non-Swiss settlor/beneficiary trust to invest in Switzerland as if foreign tax residents."
5. understand how a trust works. we are not asset managers.
6. Get the Federal Tax Office or the most affected cantonal tax commissioners involved.
7. Abolish the tax provisions! The Circular did fine and is accepted by advisers and the tax administrations.
8. Am not a Trustee, so this is just my immediate reaction/feeling.
9. Abort the "Swiss trust"-project. Focus on modernizing art. 335 CC.
10. Re-think option 1 (taxation of the irrevocable discretionary trust) and revert to the existing KS 30 regulations.
11. Taxation issues, especially taxation of irrevocable discretionary trusts (seemingly unfavourable compared to taxation or other trusts). Taxation of irrevocable discretionary trusts without settor and/or beneficiary resident in Switzerland should not trigger Swiss taxes.
12. 1) 529k: Trustee shall not be liable for the delegate, unless chosen with gross negligence
2) 529u: Prematurely terminate a trust by court, who appoints a representative also for the unborn beneficiaries
3) 529w(2): arbitration clause should be extended to all disputes, no difference
4) 528 (3): abatement and restitution should be clearly first against the Trust/Trustee and not against the beneficiary
5) 962b: Noting: The trust relation ""has to"" and not ""should"" be noted (certainty of law).
6) 54(5) VE CPE: non contradictory procedures should not be public (more attractive for HNW Families)

Survey Result on Swiss Lex Trust

Survey conducted by Verein STEP from 21 - 28 March 2022 sent by email
38 responses out of 923 invites



13. "See below. I would be pleased to take part in the consultation process. "

8. What is your biggest criticism from the context of the present drafts?

1. Not optimal tax treatment
2. The Taxation
3. Not sure what it really adds for clients and the tax makes no sense.
4. The law is not required in general and only creates confusion
5. Tax ramifications very in attractive, personal liability for trustees
6. The tax treatment of Swiss resident beneficiaries of a discretionary trust would be unfair.
7. None.
8. Tax changes
9. That the format of the Swiss Family Foundation has not been modified in the same step in order to provide a civil law alternative to a limping trust construction
10. trustees are treated like asset managers.
11. It misrepresents principles of equity and codifies them in a way that will lead to greater confusion, which is the antithesis of equity.
12. Trying to simplify a complex area into a civil law format- result is too simplistic and shallow.
13. The tax provisions.
14. again, more confrontation in an international context is needed if the Law wants to be interesting also for foreigners.
15. Not really needed...
16. "There is a broad consensus that art. 335 Swiss Civil Code should be modernized in order to allow a substantially wider scope of family foundations. The introduction of a Swiss trust, however, will not solve the problem of the current wording of art. 335 CC. Rather, it will introduce a new instrument for which there is not the slightest demand. The ""Swiss trust"" is not a trust in the well-established common law understanding of the instrument. Using the same terminology while offering a different instrument is confusing at best. "
17. The proposed taxation (option 1).
18. Not prescriptive enough.
19. Fear that Swiss courts will consider taking jurisdiction over offshore trusts disputes where Swiss indicia is present (Trustee, Settlor, beneficiary) and interpreting the offshore law through the lense of the Swiss Trust law.
20. Taxation of irrevocable trusts / Tax consequences in Switzerland where trust assets are held by foreign or Swiss investment company not addressed / Duties of trustees regarding investment management of trust assets unclear / Draft is silent whether trustee can fully exclude liability for investment management
21. hands off a law which cannot be handled correctly
22. a civil law trust does not make sense, amend foundation law to allow true family foundations
23. Tax approach is absolutely the weakest point
24. "Clearly tax issues:
Art10a: taxing on several levels, multiple tax. Proposal:
 - no taxes at the settlement
 - asset and income tax during the trust existence (as foundation)
 - Income/ inheritance tax at distribution No difference between swiss or non-swiss residency.Art.55: disregard the article completely. Beneficiaries of irr.discr. trust should not be liable at all."
25. too much "supervision"... as usual
26. Not in line with the historic principle of Trusts, AND creates MANY Conflicts of Interest. E.g., Protectors should not be beneficiaries (this is a COI). Trustees should be prohibited from ANY use of the Trust assets - such is a COI. etc...

Survey Result on Swiss Lex Trust

Survey conducted by Verein STEP from 21 - 28 March 2022 sent by email
38 responses out of 923 invites



9. I support the introduction/codification of a Swiss Lex Trust

● Yes	20
● No	11
● Neutral	7

